

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:99CV203-3-V  
3:95CR59-V

ALPHONSO DAVIS, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court upon Petitioner’s “Motion to Reopen Title U.S.C. § 2255, filed May 12, 2005. For the reasons stated herein, the Petitioner’s Motion to Reopen will be dismissed.

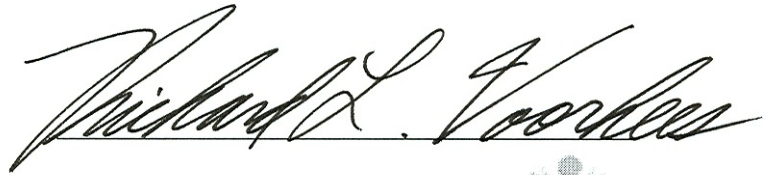
In reviewing the record, the Court notes that Petitioner filed a previous Motion to Vacate, Set Aside or Correct Sentence which was denied by this Court on June 18, 2001. (Document No. 20.) Petitioner also filed a motion for reconsideration of the Court’s June 18, 2001 Order which was denied on September 19, 2001. (Document No. 24.)

The statute allowing for the filing of motions under 28 U.S.C. § 2255 does not include a provision for “reopening” § 2255 motions that have been addressed on the merits by the district court. Petitioner’s previous § 2255 filing makes the instant filing a second or successive petition under the Antiterrorism and Effective Death Penalty Act (the “AEDPA”). See 28 U.S.C. § 2255. The AEDPA requires that a “second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . .” before it can be filed in the District Court. Id. “Before a second or successive application [for habeas corpus] is filed in the district court, the applicant

shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244 (b)(3)(A). Thus, this Court may not consider the merits of Petitioner’s claims because he failed to first certify his motion with the Fourth Circuit Court of Appeals before filing it in the District Court.

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner’s Motion to Reopen is DISMISSED WITHOUT PREJUDICE.

Signed: May 24, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the text.

Richard L. Voorhees  
United States District Judge

